Case:14-08190-ESL13 Doc#:69 Filed:02/11/16 Entered:02/11/16 12:01:48 Desc: Main Document Page 1 of 12

7IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO

IN RE:

CASE NO 14-08190 ESL

EVELIO DROZ RAMOS AUREA ESTHER FRANCO DE DIAZ

CHAPTER 13

DEBTORS

DEBTORS' REPLY TO <u>OBJECTION TO CONFIRMATION</u>, DOCKET NO. 67 FILED BY PR ASSET PORTFOLIO 2013-1 INTERNATIONAL LLC

TO THE HONORABLE COURT:

COME NOW, EVELIO DROZ RAMOS and AUREA ESTHER FRANCO DE DIAZ, debtors in the above captioned case, through the undersigned attorney, and very respectfully state and pray as follows:

- 1. PR Asset Portfolio 2013-1 International LLC ("PRAPI") filed an objection to confirmation of debtors' proposed Amended Plan, docket no. 67, basically stating that the debtors' proposed Amended Chapter 13 Plan did not provide for PRAPI's "secured claim", and that PRAPI had not been noticed of the filing of the above captioned case. Objection to Confirmation, at paragraphs 3, 4, and 5, docket entry #67.
 - 2. The debtors respectfully reply to PRAPI's objection to Plan as follows:

Undisputed Facts:

- 1. On October 02, 2014, the debtors filed the above captioned Chapter 13 bankruptcy case.
- 2. Pursuant to original Schedule "D", docket entry #01, PRAPI was listed and included as a "secured creditor" as follows:

"PR Asset Portfolio 2013-1 Int LLC C/O Mendin & Zapata 60 Jose Marti Street San Juan PR 00917" Page - 2-

Debtors' Reply to Objection to Confirmation

Case no. 14-08190 ESL13

3. It is to be noted that Banco Popular de Puerto Rico ("BPPR") was the original creditor concerning PRAPI's claim. PRAPI substituted BPPR as plaintiff at the State Court foreclosure proceedings.

- 4. Attorney Rafael H. Zapata Yordan, Esq., Mendin & Zapata, is PRAPI's State Court Counsel. PRAPI was notified, through its Counsel, of the filing of the debtors' bankruptcy case. (It is to be noted that on January 26, 2016 a copy of debtors' proposed Amended Plan was notified via US Postal certified mail to PRAPI through its State Court Counsel, at 60 Jose Marti Street San Juan PR 00917. The same was received on January 27, 2016. Attached is copy of said certified mail receipt.)
- As of the present date, February 11, 2016, PRAPI has failed to file its proof of claim, in the above captioned case. See attached copy of Claims Register, dated February 11, 2016.
- 6. On August 07, 2015, debtors, as defendants in the foreclosure case, Civil case #DCD2009-0494 (505) First Instance Court of Puerto Rico, Bayamon Part, filed a motion entitled in the Spanish language "Mocion Para Solicitar Cancelacion de Asientos Registrales", whereby debtors/defendants requested the Bayamon First Instance Court to Order that PRAPI's mortgage lien be canceled at the Puerto Rico Property Registry.

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- 7. The grounds for such request is that the Mortgage Note on which PRAPI's claim is based (original creditor was BPPR) is guaranteed with a real property that does not match with the real property encumbered with PRAPI's mortgage at the PR Property Registry.
- 8. On November 30, 2016, PRAPI, filed its opposition to debtors/defendants' motion to cancel mortgage lien. This contested matter is pending resolution by the Bayamon First Instance Court.
- 9. The debtors' proposed Amended Plan provides for PRAPI as follows: "OTHER PROVISIONS:
 - * PR Asset Portfolio (previously Banco Popular de Puerto Rico) was listed as a secured creditor in Sch "D", which security stems from a "wrongly registered mortgage" over debtors' real property, (the mortgage deed's real property description did not match the real property encumbered at the Property Registry) as stated by the First Instance Court of Puerto Rico, in civil case no. DCD2009-0494 (505), in its Order staying the foreclosure proceedings; pending resolution by said State Court is debtors' request to Order the Property Registrar to cancel the wrongly registered mortgage which may result in said creditor losing its security; also,
 - * PR Asset Portfolio did not file its proof of claim(s). Said creditor will not participate from the disbursements until it file its claim(s). Debtors reserve their right to object to any POC file by this creditor.

PRAPI's lack of standing to object Plan confirmation

10. A creditor that has not filed a proof of claim generally does not have standing to object to the Plan. *In re Stewart*, 46 B.R. 73 (Bankr. D. Or. 1985).

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- 11. Section 1324(a) of the Bankruptcy Code provides that "[A] party in interest may object to confirmation of the plan". 11 U.S.C. Section 1324(a).
- 12. The issue here is whether or not PRAPI, a creditor that has not file a proof of claim and the claims bar date has expired, is a "party in interest" within the meaning of Section 1324(a), allowed to object to the confirmation of debtors' proposed Amended Plan.
- 13. A party in interest is defined as one "whose pecuniary interests are directly affected by the bankruptcy proceedings". *In re Davis*, 239 B.R. 573, 579 (10th Cir. BAP 1999); *In re Torres Martinez*, 397 B.R. 158, 164 (B.A.P. 1st Cir. 2008); *In re Guzman*, 513 B.R. 202, 208 (Bankr. D. Puerto Rico 2014)
- 14. In the case of *In re Torres Martinez*, 397 B.R. 158 (B.A.P. 1st Cir. 2008), the Court held that if a creditor had a pecuniary interest in the case, it has standing to pursue a motion for dismissal. However, the Court held that the failure by a creditor to file a claim "curtailed his right to payment under a confirmed plan which would have discharged his claim were the plan fully performed". *In re Torres Martinez*, 397 B.R. 158, 164 (B.A.P. 1st Cir. 2008).
- 15. In the case of *In re Dennis*, 230 B.R. 244 (Bankr. D. N.J. 1999), the Court held that "...a creditor whose claim has been disallowed is not a party in interest and therefore has no standing to object to confirmation". *In re Dennis, supra*, at Page 255; *In re Parandeh*, Case No. 14-12578-BFK, Bankr. E.D. Virginia January 28, 2015 (concluding that a party with a disallowed proof of claim lacks standing to object to the debtor's Chapter 13 Plan); *In re Belser*, 534 B.R. 228, 237 (B.A.P. 1st Cir. 2015).
- 16. Therefore, having PRAPI failed to file a proof of claim in the present bankruptcy case and considering that the last date to file a claim

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elapsed, PRAPI does not have standing to object the debtors' Plan confirmation since this creditor curtailed his right to payment under said Plan, in the above captioned case.

PRAPI Received Adequate Notice of the Bankruptcy Case

- 17. The debtors noticed PRAPI of the filing of the present bankruptcy case, through its State Court Counsel.
- 18. The debtors included PRAPI in their schedules, but used the creditor's State Court Counsel's address for service of all notices.
- 19. Due process requires notice "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).
- 20. On the issue of notice to an attorney constituting notice to his or her client in bankruptcy cases, the B.A.P. 1st Circuit Court held that "...the overwhelming weight of authority is that, in bankruptcy cases, notice served on a creditor's counsel is presumed to satisfy both bankruptcy and due process notice requirements as to the creditor, so long as there is a nexus between the creditor's retention of the attorney and the creditor's claim against the debtor". *In re San Miguel Sandoval*, 327 B.R. 493, 508 (B.A.P. 1st Cir. 2005).
- 21. Therefore, PRAPI was duly included and notified of the present bankruptcy case and it elected not to timely file its proof of claim, thus, PRAPI lacks standing to object to debtors' proposed Amended Plan.
- **3.** Based on the aforestated, the debtors respectfully request this Honorable Court to deny PRAPI's objection to confirmation, docket entry #67, in the above captioned case.

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WHEREFORE debtors respectfully pray that PRAPI's objection to confirmation, docket no. 67, be denied.

I HEREBY CERTIFY that on this same date a copy of this notice was sent via electronically with the Clerk of the Court using CM/ECF systems which will send notifications of such to the Chapter 13 Trustee and other CM/ECF participants; I also certify that I have mailed by Regular United States Postal Service copy of this motion to the following non-participants: debtors, Evelio Droz Ramos and Aurea Esther Franco De Diaz, PO Box 3652 Bayamon Gardens Station Bayamon PR 00958; Briseida Y. Delgado Miranda, Esq., Delgado-Miranda Law Offices, PMB 112 130 Winston Churchill Ave Suite 1 San Juan PR 00926, PR Asset Portfolio Int'l LLC, 270 Muñoz Rivera Ave Suite 302 San Juan PR 00928; Rafael H Zapata Yordan, Esq., Zapata Yordan Attorney-at-Law, 327 Winston Churchill San Juan PR 00926, in the above captioned case.

RESPECFULLY SUBMITTED. In San Juan, Puerto Rico, this 11th day of February, 2016.

/s/ <u>Roberto Figueroa Carrasquillo</u> USDC #203614 RFIGUEROA CARRASQUILLO LAW OFFICE PSC PO BOX 186 CAGUAS PR 00726-0816 TEL 787-744-7699FAX 787-746-5294 EMAIL: <u>rfigueroa@rfclawpr.com</u>

| · St. Page | |
|--|--|
| SENDER: COMPLETE THIS SECTION Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is | COMPLETE THIS SECTION ON DELIVERY |
| item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. | A. Signature X Sull L L L Agent B. Beceived by (Printed Name) O D Addressee |
| 1. Article Addressed to: PRASSE PORTFOLED Clo Mendin & Zapato | D. Is delivery address different from item 1? If YES, enter delivery address below: No |
| Lc do. RAFAel H. ZApata gordan | |
| 60 Jose Marti Street | 3. Service Type |
| SANTIAN PROOPIN | ☐ Certified Mail®☐ Priority Mail Express™☐ Registered☐ Return Receipt for Merchandise☐ Collect on Delivery |
| 2. Article Number | 4. Restricted Delivery? (Future F.) |
| (Transfer from service-label) 7014 01 | EU 0001 |
| PS Form 3811, July 2013 Domestic Retu | |

Case:14-08190-ESL13 Doc#:69 Filed:02/11/16 Entered:02/11/16 12:01:48 Desc: Main Document Page 8 of 12 Puerto Rico

Claims Register

14-08190-ESL13 EVELIO DROZ RAMOS and AUREA ESTHER FRANCO DE DIAZ

| Bankruptcy Judge: ENRIQUE S. | LAMOUTTE INCLAN | Chapter: 13 |
|---|---|---|
| Office: Old San Juan | Last Date to file claims: 02/04/2015 | |
| Trustee: JOSE RAMON CARRIO | Last Date to file (Govt): 03/31/2015 | |
| Creditor: (4008679) Cavalry SPV I, LLC 500 Summit Lake Drive, Ste 400 Valhalla, NY 10595 | Claim No: 1 Original Filed Date: 10/03/2014 Original Entered Date: 10/03/2014 | Status: Filed by: CR Entered by: Tracyan S Frame Modified: |
| Amount claimed: \$10602.21 | | J |
| Details 1-1 10/03/2014 Claim #1 Tracyan) | | Amount claimed: \$10602.21 (Frame, |
| Description: (1-1) Cavalry SPV I, LLC as | assignee of Bank of America | /FIA Card Services, N.A. |
| Remarks: | | |
| Creditor: (4010481) | 1 | |
| Creditor: (4010481) Discover Bank DB Servicing Corporation PO Box 3025 New Albany, OH 43054-3025 | Claim No: 2 Original Filed Date: 10/08/2014 Original Entered Date: 10/08/2014 | Status: Filed by: CR Entered by: MANDY DINGUS Modified: |
| Amount claimed: \$6383.79 | | |
| History: | | |
| Details 2-1 10/08/2014 Claim #2 fi | led by Discover Bank, Amour | nt claimed: \$6383.79 (DINGUS, MANDY) |
| Description: | | , , , , , , |
| Remarks: | | |
| | | |
| Creditor: (4032775) Banco Santander de PR as a servicing agent of Fannie Mae Martinez & Torres Law Offices, P.S.C PO.Box 192938 San Juan, PR 00919-2938 | Claim No: 3 Original Filed Date: 11/20/2014 Original Entered Date: 11/20/2014 | Status: Filed by: CR Entered by: PATRICIA I VARELA Modified: |
| Amount claimed: \$47925.02 | | |
| Secured claimed: \$47925.02 | | |
| History: | | |
| Details 3-1 11/20/2014 Claim #3 file \$47925.02 (| ed by Banco Santander de Pr (VARELA, PATRICIA) | R as a servicing agent, Amount claimed: |
| Description: (3-1) Loan Number 6029 | | |
| Remarks: (3-1) Arrears \$5,871.54 | | |
| | | |

| Conditor: 0819(4649092) Doc#:69 | Fleed: 02/1.1/16 Entere | ed:02/11/16 12:01:48 Desc: Main |
|-------------------------------------|--|--|
| JOSE ISRAEL DROZ ALVARADO | Document Filedage 9 of | |
| 151 CESAR GONZALEZ ST | | |
| PLAZA ANTILLA APT 3403 | Date: 12/15/2014 | Entered by: ANGEL MENDEZ |
| SAN JUAN PR 00918 | Original Entered | Modified: |
| SAN JOAN PR 00918 | Date: 12/15/2014 | |
| | | |
| Amount claimed: \$30000.00 | | |
| | | |
| History: | | |
| Details 4-1 12/15/2014 Claim # | 4 filed by JOSE ISRAEL DRO | OZ ALVARADO, Amount claimed: \$30000.00 |
| | EZ, ANGEL) | 22 ALVAIVADO, Amount claimed: \$30000.00 |
| | | |
| Description: (4-1) 25% OF HEREDITA | RY PROPERTY EXIBIT A | |
| Remarks: | | |
| | | |
| Creditor: (4044092) | Claim No: 5 | |
| JOSE ISRAEL DROZ ALVARADO | The second secon | Status: |
| 151 CESAR GONZALEZ ST | Original Filed | Filed by: CR |
| PLAZA ANTILLA APT, 3403 | Date: 12/15/2014 | Entered by: ANGEL MENDEZ |
| SAN JUAN PR 00918 | Original Entered | Modified: |
| 3, 11, 10, 11, 11, 10, 10, 10 | Date: 12/15/2014 | |
| | | |
| Amount claimed: \$5000.00 | | |
| History: | | |
| | | |
| Details 5-1 12/15/2014 Claim #5 | filed by JOSE ISRAEL DRO | Z ALVARADO, Amount claimed: \$5000.00 |
| | Z, ANGEL) | , που επισα: φοσσοίσο |
| Description: (5-1) PERSONAL LOAN | | |
| Remarks: | | |
| r. torrarto. | | |
| | | |
| Creditor: (4052453) | Claim No: 6 | Status: |
| Department Stores National Bank For | Original Filed | Filed by: CR |
| Macys Branded | Date: 01/05/2015 | Entered by: Stacy Suire |
| Bankruptcy Processing | Original Entered | Modified: |
| Po Box 8053 | Date: 01/05/2015 | iviodinea: |
| Mason, OH 45040 | Date. 01/05/2015 | |
| [Amount claims t angle col | | |
| Amount claimed: \$2090.62 | | |
| History: | | |
| | | |
| Details 6-1 01/05/2015 Claim #6 | filed by Department Stores Na | ational Bank For Macys Branded, Amount |
| | \$2090.62 (Suire, Stacy) | , |
| Description: (6-1) Credit Card | | |
| Remarks: | | |
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| | | |
| Creditor: (4044092) | Claim No: 7 | Status: Disallow 56 |
| JOSE ISRAEL DROZ ALVARADO | Original Filed | Filed by: CR |
| 151 CESAR GONZALEZ ST | Date: 01/12/2015 | Entered by: ZIARA BITTMAN |
| PLAZA ANTILLA APT 3403 | Original Entered | Modified: |
| SAN JUAN PR 00918 | Date: 01/12/2015 | miodilieu. |
| ŧ. | Date. 01/12/2010 | |
| Amount claims di 04 0750 sell | | |
| Amount claimed: \$18750.00 | | |
| History: | | |
| | lad by 1005 105 15: | |
| (BITTMAN | JARA N | ALVARADO, Amount claimed: \$18750.00 |
| | LIMAN) | |

| case:1 | 4-081£ | 00,ESL13. | -Dac#:69 | Filed:02/11/16 Enter | ed:02/11/16 12:01:48 | | |
|--|----------------------------|--|---------------------------------------|---|---|--|--|
| | 45 | 08/11/201 | CARRAS | Doc#:69 Filed:02/11/16 Entered:02/11/16 12:01:48 Desc: Main Objection to Glaim Number 18 (19 Pay(2) Objection Language) by Claimant Jose Israel Droz Alvarado Dated 8/11/2015 filed by ROBERTO FIGUEROA CARRASQUILLO on behalf of EVELIO DROZ RAMOS, AUREA ESTHER FRANCO DE DIAZ [FIGUEROA CARRASQUILLO, ROBERTO] | | | |
| | <u>52</u> | 09/17/201 | 5 ORDER I | ORDER DENYING DEBTORS' OBJECTION TO CLAIM No. 7.8 Signed on | | | |
| | 54 | 11/12/201 | Objection Israel Dro CARRAS | 9/17/2015. (RE: related document(s)45).(ROSADO LOZA, CARMINA) Objection to Claim Number 7,8 (30 Day(s) Objection Language) by Claimant Jose Israel Droz Alvarado Dated 11/12/2015. Filed by ROBERTO FIGUEROA CARRASQUILLO on behalf of EVELIO DROZ RAMOS, AUREA ESTHER FRANCO DE DIAZ (FIGUEROA CARRASQUILLO, ROBERTO) | | | |
| | <u>56</u> | 12/23/201 | 5 ORDER (| ORDER Granting OBJECTION TO CLAIM No. 7,8 Signed on 12/23/2015. (RE: related document(s)54, 55).(MONTALVO, MARIBEL) Status: Disallow | | | |
| Descript | ion: (7-1 |) 25% HERE | EDITARY C | D & SAVING ACCOUNT BAL | ANCE | | |
| Remarks | | | | | | | |
| | | | | | | | |
| 151 CES | RAEL D AR GOI NTILLA | 4044092) ROZ ALVAR NZALEZ ST APT 3403 0918 | ADO | Claim No: 8 Original Filed Date: 01/12/2015 Original Entered Date: 01/12/2015 | Status: Disallow <u>56</u> Filed by: CR Entered by: ZIARA BITTMAN Modified: | | |
| Amount | claimed | : \$1705.00 | | | JL | | |
| History: | | | | | | | |
| Details | <u>8-1</u> | 01/12/2015 | Claim #8 fi (BITTMAN | Claim #8 filed by JOSE ISRAEL DROZ ALVARADO, Amount claimed: \$1705.00 (BITTMAN, ZIARA) | | | |
| | <u>45</u> | 08/11/2015 | CARRASQ | Objection to Claim Number 7,8 (30 Day(s) Objection Language) by Claimant Jose Israel Droz Alvarado Dated 8/11/2015 filed by ROBERTO FIGUEROA CARRASQUILLO on behalf of EVELIO DROZ RAMOS, AUREA ESTHER | | | |
| | <u>52</u> | 09/17/2015 | ORDER DI | FRANCO DE DIAZ [FIGUEROA CARRASQUILLO, ROBERTO] ORDER DENYING DEBTORS' OBJECTION TO CLAIM No. 7,8 Signed on 9/17/2015. (RE: related document(s)45).(ROSADO LOZA, CARMINA) | | | |
| | <u>54</u> | 11/12/2015 | Objection t Israel Droz CARRASQ | Objection to Claim Number 7,8 (30 Day(s) Objection Language) by Claimant Jose Israel Droz Alvarado Dated 11/12/2015. Filed by ROBERTO FIGUEROA CARRASQUILLO on behalf of EVELIO DROZ RAMOS AUREA ESTHER | | | |
| | <u>56</u> | 12/23/2015 | ORDER Gr | FRANCO DE DIAZ (FIGUEROA CARRASQUILLO, ROBERTO) ORDER Granting OBJECTION TO CLAIM No. 7,8 Signed on 12/23/2015. (RE: related document(s)54, 55).(MONTALVO, MARIBEL) Status: Disallow | | | |
| Descriptio | n: (8-1) | | | | | | |
| Description: (8-1) 25% OF HEREDITARY SAVING ACCOUNT BALANCE Remarks: | | | | | | | |
| | | | | | | | |
| Creditor: (4054824) American Express Centurion Bank c/o Becket and Lee LLP POB 3001 Malvern PA 19355-0701 Claim No: 9 Original Filed Date: 01/13/2015 Original Entered Date: 01/13/2015 Claim No: 9 Original Filed Date: 01/13/2015 Modified: | | | | Filed by: CR Entered by: THOMAS A LEE | | | |
| History: | | | | | | | |
| Details | 9-1 | 01/13/2015 | Claim #9 file | ed by American Express Cent | curion Bank, Amount claimed: \$3467.25 | | |
| | | 12/28/2015 | Withdrawal | Vithdrawal of Claim. 9. Filed by American Express Centurion Bank (Butler | | | |
| Description | | | Larry) Statu | s: Withdraw | | | |
| Description | l. | | | | | | |

Remarks:

| Anound Clember 53467.25 DOC# 69 | | ed:02/11/16 12:01:48 | | |
|--|--|---|--|--|
| History: | Document Page 11 of | 12 | | |
| | Ell- III A | | | |
| | Claim #9 filed by American Express Centurion Bank, Amount claimed: \$3467.25 (LEE, THOMAS) | | | |
| 58 12/28/2015 Withdrawal of Claim. 9. Filed by American Express Centurion Bank (Butler, Larry) Status: Withdraw | | | | |
| Description: | | | | |
| Remarks: | | | | |
| | | | | |
| Creditor: (4059191) LVNV Funding, LLC its successors and assigns as assignee of HSBC Private Label Acquisition Corporation (USA) Resurgent Capital Services PO Box 10587 Greenville, SC 29603-0587 | Claim No: 10 Original Filed Date: 01/26/2015 Original Entered Date: 01/26/2015 | Status: Filed by: CR Entered by: S GAINES Modified: | | |
| Amount claimed: \$1593.69 Secured claimed: \$0.00 History: Details 10-1 01/26/2015 Claim #10 | | | | |
| 10-1 01/26/2015 Claim #10 Claimed: \$ | filed by LVNV Funding, LLC i 31593.69 (GAINES, S) | ts successors and assigns as, Amount | | |
| Description: | | | | |
| Remarks: | | | | |
| | | | | |
| Creditor: (4090838) Department of Treasury Bankruptcy Section (424) P.O. Box 9024140 San Juan PR 00902-4140 | Claim No: 11 Original Filed Date: 03/30/2015 Original Entered Date: 03/30/2015 | Status: Filed by: CR Entered by: BARBARA DAVILA RIVERA Modified: | | |
| Amount claimed: \$1957.01 | , , , , , , | · | | |
| L RIVERA, B | filed by Department of Treasu (ARBARA) | ry, Amount claimed: \$1957.01 (DAVILA | | |
| Description: (11-1) IT (125) 2009-2010 Remarks: | | | | |
| Normanio. | | | | |

Claims Register Summary

Case Name: EVELIO DROZ RAMOS and AUREA ESTHER FRANCO DE DIAZ

Case Number: 14-08190-ESL13

Chapter: 13
Date Filed: 10/02/2014
Total Number Of Claims: 11

Total Amount Claimed* \$129474.59

Case:14-08190-ESL13 Door Filed:02/11/16 *Entered:02/11/16 12:01:48 Desc: Main Document Page 12 of 12

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

| | Claimed | Allowed |
|----------------|------------|---------|
| Secured | \$49756.51 | |
| Priority | | |
| Administrative | | |

| PACER Service Center | | | | |
|----------------------|------------------|---------------------|---|--|
| | Transa | ction Re | ceipt | |
| 02/11/2016 11:33:12 | | | | |
| PACER Login: | rf0240:2622039:0 | Client Code: | | |
| Description: | Claims Register | Search Criteria: | 14-08190-ESL13 Filed or Entered From: 1/1/1990 Filed or Entered To: 1/3/2017 | |
| Billable Pages: | 2 | Cost: | 0.20 | |